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No. 95-1121

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

WILLIAM A. CALVO, III,
Petitioner,

v.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Did the court of appeals err in disbarring petitioner?

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BRIEF FOR THE RESPONDENT IN OPPOSITION

STATEMENT

1. Petitioner William A. Calvo, III, served as counsel for the underwriter in connection with a public offering of stock by The Electronics Warehouse, Inc., made in 1984 and 1985. *SEC v. Electronics Warehouse, Inc.*, 689 F. Supp. 53, 57-58 (D. Conn. 1988), *aff'd*, 891 F.2d 457 (2d Cir. 1989), *cert. denied*, 496 U.S. 942 (1990). The offering was a "minimum-maximum" public offering in which the funds raised from investors were to be held

in escrow for a specified period. *Id.* at 58. The investors were entitled to a return of their money in the event that a certain minimum number of shares was not sold and paid for during the specified period. *Id.* A group of individuals associated with the offering company and the underwriter developed a scheme in which they "fraudulently extended the offering beyond the period specified in the prospectus; and . . . in order to make it appear that the sale of stock was complete as per the offering, they obtained short term loans which were deposited into the escrow account and inflated the number of shares allegedly sold." *Id.*[1]

On the date of the closing, petitioner delivered a letter to the bank that was holding the proceeds of the offering in escrow, authorizing the bank to release the escrow funds. 689 F. Supp. at 61. The letter specifically instructed the bank to pay $324,350 to Marvin Richmond, one of the individuals from whom a short term loan was obtained, and to pay $25,000 to petitioner as his fee. *Id.* "[Petitioner] acknowledge[d] that he authorized the payment to Richmond and that he spoke to Richmond to confirm that the payment would be made. [Petitioner] also [did] not dispute that Richmond indicated that he would be wiring money into the escrow account which was 'going in with one hand and out with the other.' " *Id.* at 62 (citations omitted).

2. The Securities and Exchange Commission (SEC) brought an action against petitioner in the United States District Court for the District of Connecticut, alleging that he had violated the federal securities laws and the SEC's own regulations in connection with the public offering. On the SEC's motion for summary judgment,

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[1] As the district court in *SEC v. Electronics Warehouse* noted, petitioner did not dispute the existence of the scheme set forth in this paragraph or that the scheme violated the securities laws. Instead, petitioner claimed that he lacked the requisite scienter to be held to have violated the securities laws based on his involvement in the scheme. 689 F. Supp. at 59.

the district court ruled in the SEC's favor, on several grounds. *First*, the court held that petitioner's recklessness in authorizing the payment to Richmond violated § 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a); § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b); and SEC Rules 10b-5 and 10b-9, 689 F. Supp. at 63.[2] *Second*, the court held that petitioner's conduct in allowing the offering to extend beyond the 150-day period represented in the prospectus also violated those provisions. *Id.*[3] *Third*, the court found petitioner liable for aiding and abetting the underwriter's securities law violations. *Id.* at 65.[4] *Finally*, the court held that petitioner had violated § 17(a) of the Securities Act of 1933, § 10(b) of the Securities Exchange Act of 1934, and SEC Rule 10b-5 by failing to disclose the ma-

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[2] The court stated: "Even drawing all permissible inferences in [petitioner's] favor, [his] act in authorizing the payment to Richmond was 'an extreme departure from the standard of ordinary care' for a person in his position as attorney for the underwriter. Further, even if the dubious, if not wrongful, basis for the transaction was not known to [petitioner], there is no question but that he knew the transaction was taking place and that it was not disclosed in either the prospectus nor in the registration. That knowledge and his failure to rectify the nondisclosure constituted recklessness as a matter of law." 689 F. Supp. at 63 (citation omitted).

[3] As the court noted, "[i]n an offering of the type at issue, the time limitation/escrow mechanism is a major protection of investors." *Id.* at 64. Despite this fact, "[petitioner] present[ed] no evidence that he ever considered the 150-day limitation or made any effort to ensure its observance, despite his awareness of its importance." *Id.* at 64.

[4] The court stated: "[Petitioner] should have known that his letter [authorizing release of the escrow funds] would lead to what the most modest of inquiry would have shown was an illegal and fraudulent closing. Thus he is liable as an aider and abettor to the underwriter's violations of Section 15(c) [of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(c),] and [Securities & Exchange] Rule 15c2-4." *Id.* at 65. Petitioner repeatedly emphasizes that ruling without also discussing the numerous primary violations for which he also was held liable.

terial fact that the founding president of the offering company had been indicted for mail fraud. 689 F. Supp. at 68. The court issued an injunction restraining petitioner from violating the securities laws discussed above. *Id.* at 71.

Thereafter, the Second Circuit upheld the district court's injunction "essentially for the reasons set forth in [the district court's] comprehensive, well reasoned, reported opinion." 891 F.2d 457, 457 (1989). This Court later denied certiorari. 496 U.S. 942 (1990).

3. In the meantime, the SEC suspended petitioner from practice before the Commission for a period of two years. *In re Calvo*, Exchange Act Release No. 27,436, 44 SEC Dkt. (CCH) 1574 (Nov. 13, 1989). The administrative law judge who assessed the sanction found as follows:

> The violations found by the [United States District Court for the District of Connecticut] were of a very serious nature. While [petitioner] points out that the Court did not find intentional or knowing misconduct on his part, damage to the investing public and the Commission's processes can be equally great from reckless conduct. [Petitioner] had a golden opportunity to put a halt to a fraudulent offering. He not only failed to do so, but by his actions contributed to the implementation of the fraud.

In re Calvo, SEC Administrative Proceeding, Initial Decision No. 3-7038, 1989 SEC LEXIS 5159, at *29 (Sept. 20, 1989).

After receiving notice that petitioner had resumed practice before the SEC, the Connecticut district court vacated the injunction against petitioner. *SEC v. Calvo*, No. H-86-282 (D. Conn. May 31, 1995), *reprinted at* Pet. App. 75. The court expressly declined to reconsider its previous factual findings. Pet. App. 75. However, it concluded that the injunction should be dissolved because it "[did] not continue to serve a useful purpose" in view

of the fact that Calvo had resumed his practice before the SEC. Pet. App. 76.[5]

4. After the federal district court's original injunction in *SEC v. Electronics Warehouse* became final, the Florida Bar conducted a full evidentiary hearing into petitioner's conduct in connection with the public offering. *See Florida Bar v. Calvo*, 601 So. 2d 1194 (Fla. 1992) (reversing referee's order limiting issues for hearing and remanding case for "a full evidentiary hearing"). The issue in the Florida Bar hearing was whether petitioner had violated Florida Bar Disciplinary Rules 1-102(A)(1) and 1-102(A)(6)(1985).[6] Following a plenary hearing, the referee recommended disbarment, and the Florida Supreme Court adopted the referee's recommendation. *Florida Bar v. Calvo*, 630 So. 2d 548, 550-51 (Fla. 1993).

The rationale given by the Florida Supreme Court for disbarring petitioner was not solely that the federal district court had found him liable for securities law violations. Rather, the Florida Supreme Court emphasized the *conduct* underlying petitioner's securities law violations, repeatedly emphasizing its potential for harming

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[5] The court also stated that "the effect of enjoinder has gone beyond the contemplation under which it entered, which constitutes fundamental unfairness." Pet. App. 76. The court's opinion does not explain, however, how in the court's view the effect of the injunction had "gone beyond the contemplation under which it entered." In addition, the court expressly declined to review the decisions of the Florida courts, discussed *infra*, and those of the SEC, as well as its own previous factual findings. Pet. App. 75.

[6] The version of those Rules that was in effect in 1985 provided:

> DR 1-102 Misconduct.
>
> (A) A lawyer shall not:
>
> (1) Violate a disciplinary rule.
>
> * * *
>
> (6) Engage in any other conduct that adversely reflects on his fitness to practice law.

Fla. Bar Disciplinary R. 1-102 (1985).

the public. 630 So. 2d at 551. The referee made independent findings concerning these underlying facts, and the Florida Supreme Court found that those findings were supported by the evidence. *Id.* at 549. The court found a number of aggravating circumstances present that made disbarment appropriate, including: (1) "the great potential for harm to the public at large that [petitioner] helped create"; (2) "[petitioner's] substantial experience in the field of securities law"; (3) "the vulnerability of the potential victims involved"; (4) petitioner's "dishonest and selfish motive"; and (5) "the continuing pattern of misconduct exhibited over the course of [petitioner's] activities in 1985." *Id.* at 551. This Court denied petitioner's petition for a writ of certiorari from the Florida Supreme Court's order of disbarment. *Calvo v. Florida Bar*, 115 S. Ct. 58 (1994).

5. After receiving notice that the Florida Supreme Court had disbarred petitioner, the Clerk of the United States Court of Appeals for the Eleventh Circuit, acting under the authority of that Court's rules, entered an order on January 5, 1994, disbarring petitioner from practice before the Eleventh Circuit effective 14 days from the date of the order. Pet. App. 31.[7] On January

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[7] The Clerk's order was entered pursuant to 11th Cir. R. 46-1(c)(4) (1991) then in effect, which provided as follows:

> When it is shown to the court that a member of its bar has been suspended or disbarred from practice in any other court of record, the clerk shall enter an order for the court, effective 14 days after issuance unless sooner modified or stayed, disbarring or suspending the member from practice in this court upon terms and conditions like those set forth in the order of the other court. The clerk shall mail a copy of the order to the attorney at the last address on the clerk's roll of attorneys admitted to practice.
>
> Within 14 days from the date of this court's order, a motion may be filed in this court by the member seeking a disposition in this court different from that provided by the order of the other court. The motion shall specify the facts and principles relied on to show cause why a different disposition should be

24, petitioner filed a "Motion for Different Disposition" in the Eleventh Circuit, Pet. App. 32, accompanied by, among other things, a 46-page narrative entitled "The Electronics Warehouse Affair." After considering petitioner's submissions and the Florida Supreme Court's decision disbarring petitioner, and following the denial of certiorari by this Court, a panel of the Eleventh Circuit disbarred petitioner from practice before that court in an order entered on August 21, 1995. Pet. App. 31-32.[8]

ARGUMENT

The decision below is correct; it does not conflict with any decision of this Court or of another court of appeals; and it presents no issue of continuing or national importance that merits this Court's attention. Accordingly, review by this Court is not warranted.

A. Petitioner claims that the Eleventh Circuit erred by relying on the Florida Supreme Court's disbarment order when the Eleventh Circuit entered its own order disbarring him, because the state court's order, according to petitioner, is flawed in various respects. However, petitioner was not entitled to relitigate in the Eleventh Circuit the claims that he raised unsuccessfully before the Florida Supreme Court. A lower federal court cannot sit as a court of error to review a state court disbarment order. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983).[9] The sole

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ordered. If the motion is timely filed, the operation of the order of this court will be stayed pending a ruling on the motion.

[8] Pending before the Eleventh Circuit is petitioner's appeal from a district court's disbarment order against him. *Calvo v. United States Dist. Ct.*, appeal pending, No. 95-4230 (11th Cir.).

[9] Moreover, the federal courts must give "full faith and credit" to state court judgments, *see* 28 U.S.C. § 1738, and petitioner has not shown that Florida law of claim and issue preclusion would allow him to bring a collateral challenge to the decision of the Florida Supreme Court.

avenue open to petitioner to challenge the Florida Supreme Court's disbarment order was through a petition for a writ of certiorari to this Court. *Id.* Petitioner took advantage of that option, and, as noted above, this Court denied his certiorari petition seeking review of the Florida Supreme Court's disbarment order. *Calvo v. Florida Bar*, 115 S. Ct. 58 (1994).

B. Federal courts have inherent power to regulate their bar membership, and the standards that federal courts use to admit and suspend attorneys are governed by federal law. *In re Snyder*, 472 U.S. 634, 645 n.6 (1985). Nonetheless, when a federal court is considering whether to disbar an attorney, a finding by a state court that disbarment is appropriate "brings title deeds of high respect." *Theard v. United States*, 354 U.S. 278, 282 (1957). "Disbarment by a state does not automatically disbar members of our bar, but this Court will, in the absence of some grave reason to the contrary, follow the finding of the state that the character requisite for membership in the bar is lacking." *In re Isserman*, 345 U.S. 286, 288 (1953) (plurality opinion) (citing *Selling v. Radford*, 243 U.S. 46 (1917)), *rule discharged*, 348 U.S. 1 (1954).

In that regard, this Court's decision in *Selling* establishes both "[t]he recognition that must be accorded" to a state judgment of disbarment as well as "the extent of responsibility that remains in the federal judiciary." *Theard*, 354 U.S. at 282. As this Court explained in *Selling*, 243 U.S. at 51:

> [W]e are of opinion that we should recognize the condition created by the judgment of the state court unless, from an intrinsic consideration of the state record, one or all of the following conditions should appear; 1, That the state procedure from want of notice or opportunity to be heard was wanting in due process; 2, that there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to

> a clear conviction on our part that we could not consistently with our duty accept as final the conclusion on that subject; or 3, that some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do.

The Eleventh Circuit's internal disciplinary rules in effect when petitioner was disbarred track the *Selling* standard. *See* Rule 5(B) & (C), Rules Governing Attorney Discipline in the U.S. Court of Appeals for the Eleventh Circuit (1992).[10]

An attorney has the burden of showing that a defect cognizable under *Selling* exists in the state disbarment proceeding. Otherwise, a federal court is not required to conduct an evidentiary hearing before disbarring an at-

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[10] Eleventh Circuit Rule 5(b) and (c) provided as follows:

> B. A determination of another court that an attorney has engaged in misconduct shall establish such conduct conclusively for purposes of a disciplinary proceeding pursuant to these rules, unless the attorney demonstrates and the Court is satisfied that:
>
> 1. the procedure used to make such determination was so lacking in notice or opportunity to be heard as to constitute a deprivation of the attorney's due process rights; or
> 2. the proof was so insufficient that the Court, consistent with its duty, could not accept as final the conclusion of the other court that the attorney engaged in such misconduct.
>
> C. Discipline imposed by another court, whether suspension or disbarment, shall likewise be imposed by this Court unless the attorney demonstrates and the Court is satisfied that:
>
> 1. the imposition of the same discipline by the Court would result in grave injustice; or
> 2. the misconduct warrants substantially different discipline by this Court.

torney based on a predicate state court disbarment.[11] In this case, petitioner has failed to make such a showing.

1. Under *Selling*, a state disbarment order should not be given conclusive effect if the record shows "[t]hat the state procedure from want of notice or opportunity to be heard was wanting in due process." 243 U.S. at 51. First, petitioner makes no claim that he lacked notice that the purpose of the hearing before the referee was to determine whether he violated Fla. Bar Disciplinary R. 1-102 (1985), which proscribes "conduct that adversely reflects on [an attorney's] fitness to practice law," and that the hearing would focus on petitioner's conduct in connection with the stock offering by The Electronics Warehouse, Inc. Second, even if petitioner's lack-of-notice contentions are assumed to be true—and the record does not support those contentions—they do not show that he was disbarred on the basis of an unnoticed charge. Petitioner claims that (1) the hearing dealt with fraud charges that had been dismissed; (2) he was de-

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[11] *See In re Jacobs*, 44 F.3d 84, 91 (2d Cir. 1994) ("the advisory panel had a clear interest in not holding an evidentiary hearing where Jacobs had made no showing that such a hearing would reveal an infirmity of proof or lack of due process in the state proceeding or risk of grave injustice from suspending Jacobs on the basis of the state order."), *cert. denied*, 116 S. Ct. 73 (1995); *see also In re Jafree*, 759 F.2d 604, 605 n.1 (7th Cir. 1985) ("It is settled law that a *de novo* evidentiary hearing is not a prerequisite where the federal court disbarment is predicated on a state disbarment that meets the due process criteria outlined in [*Selling*]."); *In re Rosenthal*, 854 F.2d 1187, 1188 (9th Cir. 1988) (declining to review *de novo* the state's findings of fact where examination of the attorney's admissions revealed no *Selling* infirmities); *Greer's Refuse Serv. v. Wilkes*, 843 F.2d 443, 447 (11th Cir.) ("Only if the [state] suspension were found to be infirm under the *Selling* standard would the district court be required to make an independent determination whether [the attorney] was fit to practice law."), *cert. denied*, 488 U.S. 967 (1988); *cf. In re Isserman*, 345 U.S. at 289 ("Our rule puts the burden upon respondent to show good cause why he should not be disbarred.").

prived of an opportunity to address the grievance committee (even though he received a full hearing before the referee); (3) he did not receive notice of the grievance committee decision; and (4) certain records relating to the underlying transaction were lost or no longer available. However, none of those claims demonstrates that petitioner was deprived of adequate notice or an opportunity to be heard.

2. Petitioner claims that the Eleventh Circuit erred in disbarring him because his misconduct was found to be reckless, rather than intentional. First, nothing in *Selling* suggests that a state court disbarment order based on a finding of recklessness cannot serve as a predicate for disbarment in federal court. Second, the state court's order indicates that petitioner was disbarred for intentional, not reckless, conduct. To be sure, the Connecticut district court, which held petitioner liable for securities fraud, found sufficient evidence as a matter of law that petitioner's conduct satisfied the scienter requirement for liability under § 17(a), § 10(b), Rule 10b-5, and Rule 10b-9 based on recklessness. 689 F. Supp. at 63-65, 68. But in Florida, petitioner was disbarred following a full evidentiary hearing, and the Florida Supreme Court, crediting the findings of the referee, found that "[petitioner] and his colleagues fraudulently sold securities that may have been worthless from the moment they were purchased." 630 So. 2d at 551. The Florida Supreme Court found that the conduct petitioner engaged in "certainly is comparable to abuse of client trust funds." *Id.*

3. Petitioner claims that the referee's exclusion from the hearing of his lead counsel. G. Richard Chamberlain, whom the Florida Supreme Court found to be a "potential material witness," 630 So. 2d at 549, rendered the Florida disbarment proceedings unconstitutional. Pet. 21-22. Petitioner's argument, however, is "based on the groundless assertion that an attorney subject to a state disciplinary proceeding enjoys the full panoply of federal constitutional protections that apply to a criminal prosecution." *In re Jacobs*, 44 F.3d at 89; *see also Razatos v.*

Colorado Supreme Court, 746 F.2d 1429, 1435 (10th Cir. 1984), *cert. denied*, 471 U.S. 1016 (1985). There is no federal constitutional right to counsel at bar disciplinary proceedings. *Statewide Grievance Comm. v. Friedland*, 609 A.2d 645, 651-52 (Conn. 1992); *Walker v. State Bar of California*, 783 P.2d 184, 188 (Cal. 1989), *stay denied*, 494 U.S. 1052 (1990). In addition, petitioner acknowledges that he was represented at the hearing by an attorney, Larry D. Houston, even though Houston was not as familiar with the matter as Chamberlain. Pet. 8-9 & n.20.

4. Petitioner appears to claim that the Florida Supreme Court's reliance on his commission of securities fraud as a basis for finding that he had committed "conduct that adversely reflects on [an attorney's] fitness to practice law," Fla. Bar Disciplinary R. 1-102 (1985), is an unconstitutional *ex post facto* interpretation of the disciplinary rule. That claim lacks merit, for two reasons. *First*, the ex post facto clause, U.S. Const. Art. I, § 9, Cl. 3, applies only to criminal prosecutions. *Galvan v. Press*, 347 U.S. 522, 531 n.4 (1954). *Second*, disbarment for the type of conduct that petitioner committed (involving fraud and decit) was foreseeable under a disciplinary rule prohibiting an attorney from "engag[ing] in any other conduct that adversely reflects on his fitness to practice law." *See generally Matter of Disciplinary Proceedings of Phelps*, 637 F.2d 171, 175 (10th Cir. 1981) ("It is not necessary that the Rules list each and every instance in which a lawyer may possibly violate these Rules, and it is unnecessary that there must have been previous judicial construction of the Rules in order for governing legal precepts to exist.").

5. Petitioner maintains that "the attorney for the Florida Bar, at the final hearing, improperly used [petitioner's] Colombian ancestry as a tool to prejudice the Referee and the Florida Supreme Court against [petitioner]" by "cit[ing] a number of cases involving prosecution of attorneys for narcotics related violations in support

of his demand for [petitioner's] disbarrment [sic], despite the fact that there were no allegations of narcotics violations against [petitioner]." Pet. 24. But the reference by the Florida Bar's *counsel* to such cases is not adequate to prove that the Florida *Supreme Court* either relied on such cases or, more importantly, on petitioner's nationality. Accordingly, petitioner's claim of discrimination is not supported by proof that the Florida Supreme Court (let alone the Eleventh Circuit) disbarred him because of his national origin.

6. Petitioner argues that his disbarment is cruel and unusual punishment because there was no evidence in the Florida disbarment proceedings that he posed any danger to society. Pet. 25. Disbarment, however, is not a "punishment" to which the Eighth Amendment applies. *See Isserman*, 345 U.S. at 289. Moreover, the Florida Supreme Court's decision is replete with references to the significant risk of harm to the public petitioner's conduct created. *See* 630 So. 2d at 551 (citing "the great potential for harm to the public at large that [petitioner] helped create"; "We can conceive of few situations posing more serious harm to a large segment of the public than a fraudulent offering of securities."). The Eleventh Circuit acted well within its discretion in determining that the severity of Florida's disbarment order in relation to Calvo's conduct was not a "grave reason" that precluded the court from giving conclusive effect to the state disbarment order. *See Selling*, 243 U.S. at 51.

7. Under the heading "Laches and Estoppel," petitioner appears to argue that he was prejudiced by the delay between the underlying events involving the Electronics Warehouse stock offering, which occurred in 1985, and the Florida disciplinary hearing, which concluded in 1992. Pet. 25. The only prejudice that petitioner has identified is that he no longer maintained records pertaining to the underlying transaction. Pet. 19. Petitioner does not describe, however, how his inability to use those records hindered him in the state disbarment proceedings.

Absent a showing of prejudice, the passage of time alone does not present a "grave reason" that would preclude the Eleventh Circuit from giving conclusive effect to the Florida disbarment order. *See Greer's Refuse Serv.*, 843 F.2d at 448 n.12.

8. At numerous points in the petition, petitioner suggests that the predicate for the judgment entered against him by the Connecticut district court since then has been rendered invalid due to this Court's ruling in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 114 S. Ct. 1439 (1994), that a person cannot be held liable in Section 10(b) cases on an "aiding and abetting" theory. *See* Pet. 3, 10 n.26, 14 n.51, 15 & n.54, 26 & n.73, 28-29. Petitioner's arguments are mistaken. The Connecticut district court held that Calvo had committed *primary* violations of § 17(a) of the Securities Act of 1933, § 10(b) of the Securities Exchange Act of 1934, and SEC Rules 10b-5 and 10b-9. 689 F. Supp. at 63, 68.[12] This Court's decision in *Central Bank* does not in any way call into question any reliance the Florida Supreme Court may have made on the Connecticut federal court's holdings with respect to those primary violations. In addition, a fair reading of the Florida Supreme Court's opinion shows that that court disbarred petitioner, not based on technical securities laws violations, but because of petitioner's underlying conduct, which that court found to create a "great potential for harm to the public at large . . . ." 630 So. 2d at 551.

9. Under *Selling*, a state disbarment order should not be given conclusive effect if the record shows "[t]hat

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[12] In addition, the aiding and abetting violation for which petitioner was held liable was not aiding and abetting a § 10(b) violation but, instead, aiding and abetting the underwriter's violation of § 15(c) of the Securities Exchange Act of 1934 and SEC Rule 15c2-4, regulating "fraudulent, deceptive, or manipulative act[s] or practice[s]" by brokers, dealers, or municipal securities dealers. 689 F. Supp. at 68. *Central Bank* did not address those theories.

there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a *clear conviction* on our part that we could not consistently with our duty accept as final the conclusion on that subject." *Selling*, 243 U.S. at 51 (emphasis added). Calvo argues that an infirmity of proof exists in the Florida disbarment proceedings. He argues that the Florida referee relied on findings that had been made in the Connecticut federal action and in the SEC disciplinary proceeding under the preponderance standard, while the Florida Bar proceedings used a clear-and-convincing evidence standard. Pet. 27. The Florida Supreme Court rejected that argument, holding that the difference in standards of proof goes to the weight to be given the information in the Florida disciplinary proceedings, not to its admissibility. 630 So. 2d at 550. That court also found "no error in the way the referee admitted and considered this information, especially in light of the overwhelming case against [petitioner] in the SEC proceedings." *Id.* As noted, the Florida Supreme Court ruled in an earlier appeal by petitioner that a full evidentiary hearing was required to decide whether he should be disciplined and that the Florida Bar could not use the decisions in the SEC cases to establish conclusively Calvo's misconduct. *Florida Bar v. Calvo*, 601 So. 2d 1194 (Fla. 1992). Under these circumstances, the Eleventh Circuit acted within its discretion in concluding that petitioner's infirmity-of-proof arguments did not "give rise to a clear conviction" on its part that the state disbarment order could not be given conclusive effect. *Selling*, 243 U.S. at 51.

10. Petitioner claims that he was denied due process in the state disciplinary proceedings because the Florida Bar lost his files and he was denied adequate discovery. Petitioner, however, does not specify what lost documents were material to the disbarment proceedings, nor does he identify what information he needed to obtain through discovery or how the absence of that information prej-

udiced him in the disbarment proceedings. His conclusory arguments do not present a "grave reason" that would preclude the Eleventh Circuit from giving conclusive effect to the Florida disbarment order. *Selling*, 243 U.S. at 51.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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